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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Annual report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the annual report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia.

In the present report, the High Commissioner celebrates the advances in the negotiations to end the internal armed conflict between the Government of Colombia and the Revolutionary Armed Forces of Colombia-People's Army, highlights the positive effects they have had during 2015 and identifies risks and opportunities for peacebuilding, on the basis of the human rights situation observed and international experience.

The High Commissioner examines structural human rights challenges considered priorities that must be addressed in order for the peace process to transcend the end of hostilities and bring about transformation towards the enjoyment of human rights by all men, women, girls and boys in Colombia.

The report includes 13 recommendations.

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Annual report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*,**

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* The present report was submitted after the deadline in order to reflect the most recent developments.

** The report is being circulated in English and Spanish only.

I. Introduction

1. The office in Colombia of the United Nations High Commissioner for Human Rights was established in 1996 through an agreement between the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Government and renewed in 2014 through 31 October 2016. The report is the result of monitoring by the office in Colombia (OHCHR-Colombia) of the human rights situation and technical cooperation in the country, through its 12 field offices. From 15 to 21 April 2015, the Deputy High Commissioner visited Colombia, meeting national and local authorities and representatives of ethnic, social and human rights organizations in Bogotá, Cauca and Putumayo. In 2015, periodic reports submitted by Colombia were considered by the Committee on the Rights of the Child, the Committee against Torture and the Committee on the Elimination of Racial Discrimination.

2. The High Commissioner transmits his sincere recognition to the Government of Colombia and the Revolutionary Armed Forces of Colombia-People's Army (FARC-EP) for the historic advances in their negotiations in Havana to end the internal armed conflict. Four of the six negotiation agenda items have concluded in preliminary agreements. The agreement reached in 2015 on victims of the armed conflict follows agreements on rural reform, political participation and illegal drugs. Congress approved the holding of a referendum on the peace accords that will require approval by 13 per cent of the electorate. The Government and the National Liberation Army have yet to initiate formal peace negotiations.

3. The United Nations and the Union of South American Nations designated representatives to support the negotiating parties' subcommission on the end of the armed conflict. In 2015, the President of Colombia announced that the State would request Security Council support in monitoring an eventual ceasefire.

4. As the Government recognized in its planning, the sustainability of peace will depend on Colombia overcoming the enormous divide in human rights enjoyment between rural and urban areas, between men and women and between different population and ethnic groups. This will require participative processes that enable the State — through commitment, funds and capacity — and civil society, including social movements, the private sector, academia and faith-based entities, to find and implement solutions jointly. The implementation of the eventual peace agreements must aim to generate the conditions necessary to overcome past conflict-related violations, as well as structural human rights problems.

5. OHCHR-Colombia continued to coordinate with and support the Ombudsperson's Office throughout the country. It also strengthened coordination with the United Nations country team, advising on the integration of a rights-based approach in the Development Assistance Framework for Colombia for 2015-2019 and on support for State implementation of recommendations issued by international and regional human rights mechanisms.

II. Peace process and victims of the armed conflict

6. In 2015, a third year of the peace negotiations was completed. The High Commissioner highlights government and FARC-EP recognition of the centrality of victims and their rights in the negotiations and underlines the importance of the realization of those commitments in the implementation phase.

7. Between June and December 2015, the parties announced agreements to create an integrated truth, justice, reparation and non-recurrence system, composed of an independent and non-judicial commission on the clarification of truth, coexistence and non-repetition; a special unit for locating persons disappeared in the armed conflict; and a special jurisdiction for peace. The parties also agreed upon measures on comprehensive reparation and non-recurrence of violations and emphasized the human rights obligations of the State.

8. The scope of the integrated system offers a unique opportunity to address victims' rights. OHCHR-Colombia advises the State on overcoming the considerable implementation challenges, including with respect to budgetary issues, financial support mechanisms, operational management and coordination and deployment processes that promote victims' rights.[1] Transparent processes for selecting members and an effective administrative system are essential for the system's credibility and legitimacy. Coordination and cooperation mechanisms, including those to ensure constructive relationships with institutions dealing with victims and the judiciary, require definition. A clear system of incentives and guarantees to maximize participation by State actors, FARC-EP and third parties is necessary. The situation observed by OHCHR-Colombia highlights the urgent need for an independent protection mechanism for military and police members wishing to contribute to truth and justice.

9. The High Commissioner recognizes the value of the report — a contribution to the understanding of the armed conflict in Colombia — published in February 2015 by the Historical Commission on the Conflict and its Victims at the request of the negotiating parties in Havana. Future historical clarification processes should further include the perspectives of women, indigenous peoples and Afro-Colombians.

10. OHCHR-Colombia provides advisory assistance to facilitate the reflection of varied and ethnically distinct local realities in any truth clarification and recognition of responsibilities undertaken through a future truth commission. The mandate of the proposed commission includes the promotion of social reconciliation; it should also provide a common understanding of the magnitude and causes of violations committed in a context marked by polarization, violence and exclusion. The commission could be invaluable for confronting the denial that has characterized patterns of human rights violations.

11. The agreement on persons reported disappeared or missing provides for immediate measures such as the provision by the parties of information to accelerate location processes. OHCHR-Colombia is advising the Government on the creation of the special location unit envisioned in the agreements, with the participation of victims' and human rights organizations and the support of specialized institutions. In December 2015 in Villavicencio, the Attorney General's Office returned the remains of 29 previously unidentified persons, buried in four cemeteries in Meta and Guaviare, to their families.

12. OHCHR-Colombia provides the Government with advice on overcoming the challenges posed by the multiple and dissimilar registries of disappeared persons, which hamper the measurement of the phenomenon's magnitude. The registry of the Attorney General's Office includes 70,000 disappeared persons; the National Registry of the Disappeared includes 19,855 men and 2,511 women; and that of the Comprehensive Victim Support and Reparation Unit (UARIV) includes 45,515 persons. The National Registry of the Disappeared recorded 5,482 disappearances between January and November 2015, of

[1] Given its mandate, the resources necessary for the future truth commission in Colombia are likely to exceed those that were invested, for example, in South Africa, whose commission had a staff of 400 and an annual budget of US$18 million in its first years; in Peru, whose commission, with a less ambitious mandate, had a staff of 500 and a biannual budget of over US$13 million; or in Guatemala, where the commission had a staff of 200 and a total outlay of US$10 million over two years.

which 105, including 18 women, are alleged forced disappearances. In October, the national location commission began revising its registries, with relevant institutions and social organizations, to produce more reliable data.

13. The justice component of the peace agreements generated arduous debate and was a major source of concern for sectors critical of the peace process. The agreement to create a special jurisdiction for peace provides for amnesty and pardon mechanisms and a special judicial procedure on individual criminal responsibility for serious crimes not subject to amnesty, pardon, sanctions or reparations. It would apply differently to guerrillas, State actors and individuals responsible for grave human rights and/or international humanitarian law violations. The special jurisdiction offers a window of opportunity against impunity. OHCHR-Colombia provides advisory assistance regarding ways to overcome the challenges implicit in addressing such a wide range of violations. The agreement provides only a general outline and its implementation requires greater definition with respect to, among other things, the specific acts to be prosecuted, the applicable legal framework and the procedures for strategic orientation. Shortly after publishing the agreement, the President of the Republic unilaterally announced how it would apply to State and private actors.

14. Between August and November, the country experienced the least intense offensive actions in 50 years of armed conflict, owing to confidence-building measures such as the unilateral ceasefire by FARC-EP and the Government's de-escalation of offensive operations. OHCHR-Colombia observed that the peace negotiations prevented many human rights violations. Nevertheless, the acute humanitarian situation generated by diverse actors continues, disproportionately affecting the rural, indigenous and Afro-Colombian populations. The Ombudsperson's Office documented displacement, social control, threats, extortion and restrictions of movement in various departments.

15. The High Commissioner welcomes the agreement of 7 March on mine and ordnance clearing. The Government and FARC-EP initiated a pilot mine clearing plan in Briceño, Antioquia, with support from the United Nations Mine Action Service. The deactivation of 33 explosive artefacts and the clearing of 14,000 square metres of land was announced. A second phase began in Mesetas, Meta. During 2015, the Government reported 222 victims of mines and other artefacts; 31 of those died. A total of 66 of the victims were civilians, including 12 women and 27 children.

16. In November, the Government announced unilateral measures on behalf of 106 imprisoned FARC-EP members, including the pardoning of 30 members convicted of rebellion and a pilot programme for return to civilian life with psychosocial and health support and access to education and job training. OHCHR-Colombia provides the Government with advisory support on improving institutional coordination in these processes.

17. The High Commissioner welcomes the announcement that FARC-EP will end child recruitment and release children under 15 years of age from its ranks. A child separation programme must be developed rapidly, guaranteeing respect for girls' rights and an ethnically sensitive approach.

18. The High Commissioner supports the recognition of responsibility by all those responsible for human rights violations as part of the peace process. On 6 November, 30 years after the extrajudicial executions and disappearances resulting from the operation of the security forces to retake the Palace of Justice, the State recognized its responsibility, in

partial compliance with a judgment handed down by the Inter-American Court of Human Rights.[2]

19. On 6 December, FARC-EP conducted a ceremony in Bojayá, Chocó to recognize its responsibility and issue a public apology for the civilian deaths and damage caused during a battle with paramilitary forces in 2002. This symbolic event, in which the State also recognized its responsibility, is historic. OHCHR-Colombia provides advisory support for this process, which requires additional action by the State and FARC-EP to empower and address the rights of the residents of Medio Atrato, Chocó.

20. The High Commissioner applauds the presidential decision to request United Nations support for the peace process. The international response must adapt to the Colombian context and characteristics. This will be one of the first such operations since the launch by the Secretary-General of the Human Rights Up Front initiative to ensure early and effective United Nations action to prevent or respond to large-scale violations of human rights and/or international humanitarian law. The High Commissioner's annual reports on the situation in Colombia document how the conflict's impact on civilians extends beyond the direct effect of hostilities, undermining the free exercise of rights necessary for peace.

21. The peace process presents numerous challenges, but greater opportunities to improve the enjoyment of human rights. The challenges, including illicit economies, require budgetary changes and the will to invest in change opportunities. The compartmentalization of collective State responsibilities and practices that prioritize process over results is an approach that must be discarded in order to reflect the comprehensive nature of the peace agreements and realize their objectives.

III. Peacebuilding: opportunities and risks for human rights

22. On 9 December, the President of the Republic stated that respect for human rights represents a sound development plan for Colombia. The High Commissioner considers that maximizing the opportunity of the peace agreements will depend on the capacity to create cultural, institutional, political and economic change in order to enhance human rights enjoyment by the most excluded sectors. Based on 18 years of monitoring in the country, the High Commissioner considers that change must come in the following interrelated areas.

A. Violence

23. OHCHR-Colombia observed that post-demobilization armed groups and related actors constantly undermine human rights and citizen security, the administration of justice and peacebuilding, including land restitution. The dismantling of the groups that control stolen land through the use or threat of violence represents a permanent challenge to peace. During two weeks in December in the urban centre of Tumaco, Nariño, where State presence is strong, 14 persons, including two children and two women, were killed in incidents that the police linked to such groups. In June, a member of a family claiming land restitution in Turbo, Antioquia, was killed in Ayapel, Córdoba. In northern Urabá, a post-demobilization armed group threatened and harassed campesinos whose land had been stolen. In Magdalena, a land restitution judge suffered repeated threats and, in Cesar, computers containing information on land restitution processes were stolen.

[2] See *Rodríguez Vera and others (the disappeared from the Palace of Justice) vs. Colombia*, judgment of 14 November 2014. Available from www.corteidh.or.cr/docs/casos/articulos/seriec_287_ing.pdf.

24. On the basis of international experiences, it is foreseeable that the cessation of hostilities and guerrilla demobilization could lead to power vacuums and disputes over the control of illicit incomes generated by drug trafficking, extortion, human trafficking, prostitution, mining and co-optation of State resources. Diverse local interests and groups opposed to change resulting from the peace process are already employing violence and intimidation to protect their interests, and the State has not had a sufficiently effective response.

25. As OHCHR-Colombia has observed, this violence is directed against the population, public officials and social leaders defending rights or opposed to illegal activities. Persons who participate in the implementation of the peace agreements, including demobilizing guerrillas contributing to truth, justice and non-recurrence, could also be vulnerable. The risks for demobilizing persons are known from previous demobilization processes in Colombia, including of the M-19 group and paramilitary groups.

26. Local elections were held on 25 October. The civil society-run Electoral Observation Mission reported 179 politically related violent incidents during 2015 in 112 municipalities in 28 departments, including 124 threats, 29 attempted killings, 20 killings, four kidnappings and two disappearances. Victims included candidates, elected public officials and political leaders, undermining the right to participate in public affairs, to vote and to be elected.

27. The High Commissioner welcomes ongoing State action against organized crime and the numerous arrests made, including of high-level criminals. Greater dismantling of criminal structures through the investigation of criminal money flows and laundering remains necessary, as does strengthening internal coordination in the Attorney General's Office.

28. FARC-EP affirms that reintegration of its members will be an essentially rural process. This represents a new challenge for Colombian institutions more experienced in urban reintegration. Colombian experiences demonstrate the need to address illicit economies and provide attractive alternative economic incentives, such as specialized employment programmes running from 5 to 10 years.

29. Guerrillas must abandon the exercise of control through violence practised in the decades of operating outside of the law. The individual and collective changes necessary for reintegration and civilian political participation require that guerrilla leaders publicly ensure respect for the population's rights and reject violence.

30. The hundreds of assassinations of leaders and members of the Patriotic Union political party in the 1980s and 1990s illustrate the elevated risk for new political movements. Security guarantees and transformation of the political reality are essential to avoid repetition of that situation.

B. Illegal economies

31. OHCHR-Colombia continued to support the negotiating platforms on crops for illicit use. While the campesino association of Catatumbo in Norte de Santander fulfilled its commitment to ensure that campesino families cease cultivating coca, a number of government commitments remain unfulfilled, despite efforts. The success of voluntary substitution programmes depends on technical support and the creation of viable markets for products. This in turn requires, among other things, rural infrastructure. For example, in its dialogue on substitution, the Regional Platform of Social Organizations in Putumayo requested the Government to implement the integrated development plan for the Amazon-Andes region.

32. The High Commissioner supports the premises of the peace agreement on solving the problem of illegal drugs, which highlight the human rights impact of producing crops for illicit use and its relationship with poverty, marginalization, weak State presence and criminal activity. He also values the decision to develop a participatory human rights-based response, with a localized focus, recognizing the ancestral uses of coca and differentiating between consumption, coca growing and organized crime. A public health approach to address consumption, and the promotion of alternative, dignified livelihoods, together with the dismantling of criminal networks, represent an appropriate strategy to improve living conditions throughout the country.

33. In the context of the health effects of the use of glyphosate in coca crop eradication, confirmed by the World Health Organization, and the agreement on illegal drugs concluded in Havana, the national council on narcotics took the precautionary measure of suspending glyphosate use from October, and offered incentives for campesinos to cease coca cultivation.

34. OHCHR-Colombia continued to advise the Government on action to confront illegal mining and its social and human rights effects. A major expansion of such mining on the Pacific coast was especially detrimental. The situation of the Renacer Negro Community Council in Cauca exemplifies how gold extraction opportunities and State abandonment attract armed actors and outsiders, weakening community organization and control and affecting the environment. The comprehensive measures agreed to by the Government and the Afro-Colombian women of northern Cauca affected by illegal mining were partially implemented but the dialogue was suspended. Illegal mining presents complex challenges that require an integrated response similar to that proposed for addressing illicit crops. Differentiating between organized crime and other actors, fulfilling human rights and ensuring participation are essential, as is addressing the relationship between corruption and omission by certain authorities.

C. Institutional architecture

35. OHCHR-Colombia observed that State institutions faced ongoing difficulties in effectively implementing their legal mandates and ensuring that their action closes the gap between law and public policy and the genuine enjoyment of rights, especially in conflict-affected zones. Those difficulties are especially pronounced when interinstitutional coordination is required. OHCHR-Colombia provides advisory support for the nearly 50 State entities that comprise the National System for Victim Support and Reparation. Differences in the vision and interests of these institutions block implementation and dilute both responsibility and accountability, generating frustration and disempowerment among victims.

36. Institutional effectiveness, efficiency and credibility are also undermined by the perception of corruption, a lack of transparency and the impact of 50 years of conflict on institutional culture, which contributes to the stigmatization of human rights defenders and social, ethnic and political actors. The lack of transparency, including in the security sector, is disproportionate, undermining accountability and the right to participate in public affairs. Proposals for overcoming those challenges are listed below.

1. Human rights indicators

37. The High Commissioner welcomes the inclusion of references to the rights-based approach in the National Development Plan 2014-2018 and the instruction to apply the approach to all public policy. Nonetheless, development plans and budgets continue to have a sectoral focus oriented more towards implementing budgets than guaranteeing rights. This

undermines the State's ability to measure the impact of public policy and investment on the progressive realization of rights.

38. The presidential office for human rights has a system for managing civil and political rights information; OHCHR-Colombia has advised the office on the system, but it requires improvement. No such system exists for information relating to economic, social and cultural rights. OHCHR-Colombia reiterates that it is available to provide technical support in constructing and updating basic human rights indicators. The Havana agreements and the 2030 Agenda for Sustainable Development emphasize the centrality of economic, social and cultural rights for sustainable development, which obligates the State to maintain detailed data on the enjoyment of rights, disaggregated by location, age, gender, ethnicity, disability and other criteria, in order to develop, implement and evaluate public policy.

39. In 2015, the National Planning Department promoted a public discussion of the peace process and its potential dividends based on international experiences. In addition to scarce State presence in various areas, the double challenge of weak institutional capacity, corruption and illicit co-optation of local State authorities on the one hand, and the poor quality of results, the lack of oversight and clientelism in policy implementation from Bogotá on the other, were emphasized. Ensuring gender equity, particularly in conflict-affected areas, was an additional challenge.

2. Participation and social dialogue

40. As requested by the negotiating parties, OHCHR-Colombia continued to act as guarantor/facilitator in social dialogue processes between the Government and social sectors claiming their rights, including the agrarian negotiating platform, regional platforms in Antioquia, Arauca, Cauca, Catatumbo, Sur de Bolívar and central Cesar, and processes of dialogue with indigenous peoples and Afro-Colombians.

41. Social protest is a means to demand respect for and fulfilment of human rights and an opportunity to reorient State policies. The High Commissioner salutes the Government's open and positive response to social demands, comprising processes for national, regional and local dialogue with diverse sectors, including rural and marginalized groups. Dialogue with conflict-affected rural populations represents a complementary form of participation towards peace.

42. OHCHR-Colombia identified various causes of a lack of compliance by Government with the commitments it acquired through social dialogue. The lack of appropriate and responsive institutions, institutional readjustment and budgetary restrictions affected project-implementation commitments negotiated with the agrarian negotiating platform, for example those made by the Ministry of Agriculture. Flexible, agile administrative procedures responsive to beneficiary rural organizations were lacking. In processes such as the Catatumbo regional platform, lack of coordination between national and local levels affected project sustainability. The Cauca and Antioquia dialogue platforms relied on local institutions but, despite efforts by the Ministry of the Interior, participation by other national institutions was inadequate.

43. Successful social dialogue requires clear agendas, procedures and indicators for follow-up, and consequences for non-implementation. All affected communities must be empowered to participate. Strengthened government implementation capacity is necessary, as are creative alliances with the private sector, civil society and faith-based entities.

3. Non-recurrence and security sector reform

44. In 2015, OHCHR-Colombia observed that processes to reform the intelligence sector lacked high-level civilian leadership. Human rights were not adequately integrated into intelligence manuals and procedures. In December, journalists investigating alleged

police corruption and illegal activities denounced illegal surveillance by the police intelligence service. The High Commissioner welcomes the interest of the National Intelligence Directorate in receiving advice on integrating human rights into the curriculum for its personnel.

45. The High Commissioner welcomes the commitment made by the new Minister of Defence in June to recognize, support dialogue on and act on human rights issues. An example is the public recognition, on 28 October, of the illegality of arbitrary detention in the context of military recruitment (*batidas*) which had been institutional policy. Statements by the army chief on the need to modernize military doctrine and the creation of a working group on gender within the military are promising.

46. The High Commissioner considers that State, institutional and individual recognition of grave human rights violations is key for reconciliation. Security sector institutions, including their current and former members, must now publicly recognize such responsibility and visibly participate in truth, justice and reparation processes. The omission in the new historical museum focused on the Department of Administrative Security (DAS) — the former civilian intelligence agency — of references to the massive human rights violations that led to the closure of the Department calls into question government coherence in this regard.

47. The recognition by the negotiating parties in Havana that non-recurrence guarantees represent a pillar of the peace process implies, among other things, the State commitment to rationalize, reorient and strengthen security institutions towards full respect of human rights and constitutional mandates. It was agreed that the Government would address this issue.

48. Monitoring by OHCHR-Colombia and international experience indicate that any security sector reform agenda to ensure non-recurrence in Colombia should include plans to: strengthen democratic oversight by civil society and the three branches of government; create a ministry related to public security; ensure greater transparency in security sector spending to counter corruption; modernize the police to ensure it the capacity necessary to fully implement its mandate nationwide; reform the police code; apply international human rights law in all action against crime; strengthen the capacity of regional and local authorities with respect to citizen security; ensure robust civilian oversight of private security companies and civilian arms control; ensure gender integration; and vet personnel linked to human rights violations, corruption or illegal groups. In some countries, military support for internal security has become quasi-permanent, undermining the strengthening, budgets and effectiveness of the police, as well as the rule of law, and generating cycles of insecurity.

4. Archives

49. The protection of, access to and use of State and non-State human rights archives are essential for peacebuilding. Archive destruction, loss or deterioration would hamper the effective functioning of truth, justice, reparation and non-recurrence mechanisms. State action must thus be taken immediately, in particular by the Procurator-General's Office, which is responsible for protecting administrative archives under the Victims and Land Restitution Law. The Office has taken no known measures to respond to ongoing reports of the destruction or "loss" of military archives.

50. OHCHR-Colombia received documents outside the public domain, such as a report attributed to DAS, dated July 1993, in which the following is stated: "This Unit has not conducted any operation except for routine missions by Detectives including Psychological Torture, Simple Kidnapping and Extortion." The DAS Intelligence Plan 2003-2004 identified human rights organizations to establish "what type of political work they conduct against the State and the National Government, especially complaints at national or

international levels related to Human Rights, the Peace Process or Democratic Security, among others". A confidential military document, dating from 2008, emitted the year the Ministry of Defence published its integrated human rights policy in response to "false positive" extrajudicial executions, confirms an order by the then army chief to incinerate internal orders that had established institutional rewards for deaths in combat and captures.

51. The special truth and justice mechanisms agreed in Havana will require broad access to archives to fulfil their mandates. However, pursuant to the agreements, they will have access "in conformity with applicable laws". OHCHR-Colombia observes that existing law and practice in Colombia do not guarantee the necessary access. Independent State entities lack power to make confidential archives public; presidential power to do so is limited to that provided for under the intelligence law. The budgets, technological tools and methodologies for processing and making archives available have yet to be established.

D. Fight against impunity for gross human rights violations

52. State institutions, particularly the judiciary, continue to have considerable difficulty overcoming their deficiencies and producing results.

1. Attorney General's Office

53. In 2012, the Attorney General's Office adopted a prioritization policy and created a new criminal investigation system to improve investigation and sentencing in cases of illegal intelligence activities and gross human rights violations, including extrajudicial executions, killings of human rights defenders, sexual violence and enforced disappearance.

54. OHCHR-Colombia noted that the lack of results was due to strategic deficiencies, including failure to apply situational crime analysis methodologies to link investigations and dismantle criminal structures, and an inadequate internal incentives system. The isolated advances made were more a result of the commitment of individual personnel.

2. Past extrajudicial executions

55. In a 2015 ruling on the army execution of a young man with physical and mental disabilities in Casanare in 2007, the State Council declared that extrajudicial executions had been a systematic practice.[3] A significant indicator in the fight against impunity in Colombia would therefore be the successful prosecution of the highest ranks responsible for this systematic practice between 2002 and 2008.

56. Those criminal investigations have not advanced sufficiently. In 2015, the Human Rights and International Humanitarian Law Directorate in the Attorney General's Office, which processes a significant portion of these cases, registered 2,653 homicide investigations, of which 167 are closed. A total of 7,773 members of the army are linked to these cases, involving 4,392 victims, including 183 women and 223 children. As of August, 838 army members (6 colonels, 99 officers, 127 junior officers, 603 soldiers and 3 with undefined rank) had been convicted in 210 cases.

57. OHCHR-Colombia observed dilatory tactics by the defence and judicial laxity in homicide cases against security sector members. For example, one human rights prosecutor sought unsuccessfully for three years to indict an army colonel for a September 2007 killing in Neira, Caldas. Similar tactics are evident in the judicial proceedings against police

[3] State Council, Administrative Chamber, Third Section, Direct Reparation Action (judgment), 7 September 2015.

officers for the killing of Diego Felipe Becerra in 2011. Lack of disciplinary action against lawyers using such practices or judges that tolerate them undermine non-recurrence.

58. Since 2012, the Attorney General has made multiple public commitments to move forward investigations against senior military officers. At the end of 2015, nine army generals had given preliminary declarations. While international law recognizes criminal responsibility through omission, this has not been adequately applied to military commanders in Colombia, including in cases of "false positive" extrajudicial executions or paramilitary actions in zones under military control.

59. Directive 0003, issued by the Attorney General in December, on the criminal prosecution of war crimes on national territory must be modified to be consistent with international standards and Constitutional Court decisions to reflect the simultaneous application of international human rights law and international humanitarian law.

3. Current extrajudicial executions

60. During 2015, OHCHR-Colombia documented 10 cases of alleged arbitrary deprivation of life by army members in Antioquia, Cauca, Tolima, Arauca, Meta, Norte de Santander and Caquetá. The army qualified five of these as "military errors" without clarifying the operational, command and control, tactical discipline or procedural causes. The State breaches its international obligations when it fails to take effective criminal, disciplinary, operational and/or command and control action to ensure non-recurrence.

4. Intelligence

61. In two significant reverses in the fight against impunity for past civilian intelligence violations by DAS, the Attorney General's Office declared that the statute of limitations for three crimes had elapsed and failed to impose preventive detention on eight ex-DAS officials. In a case involving psychological torture of a female journalist, State omission enabled the former Director and Secretary-General of DAS to leave the country despite the fact that an arrest warrant had been issued and his location had been known to the authorities.

5. Feminicide

62. OHCHR-Colombia considers the criminalization of feminicide through Law No. 1761 of 2015 as progress. It is necessary to conduct a comprehensive analysis of the procedural and investigative failings that impeded convictions against those responsible for the killings of women and to ensure that the normative change leads to substantive improvement in women's enjoyment of the right to life. OHCHR-Colombia offers the State technical support in this regard.

E. Victims' rights

1. Registration

63. The Government has from the outset prioritized the rights of and response to victims of armed conflict through the Victims and Land Reparation Law and through the recognition of victims in the peace process. Over the past four years, an average of 1,600 victims of incidents occurring prior to or after the law's adoption have been registered each day. A total of 7,874,201 victims have been registered, almost 50 per cent women and children. UARIV calculates that 6,084,064 persons — 12.4 per cent of the population — require reparations. This exceeds the currently allocated economic and technical resources.

64. Internally displaced persons represent the largest group of registered victims: 6,897,450 persons. In 2015, 76,017 new displaced persons were registered. This represents an enormous challenge for providing support and reparation, requiring action in isolated zones where displacement is recurrent, such as the Pacific coast and Antioquia, and special protection for indigenous and Afro-Colombian communities.

2. Transformative reparations

65. The greatest number of awards of individual compensation was paid to victims in Medellín, Bogotá, Apartadó, Bello, Cúcuta, Villavicencio and Cali. In some cities, complementary transformative and non-recurrence measures were implemented. In rural zones and other cities, compensation lost its transformative potential due to the relatively low level of human rights enjoyment and the inaction, inadequate budgets, technical capacity or political will of local authorities.

66. OHCHR-Colombia continued to advise and support UARIV, whose enormous efforts merit recognition. However, the mandate, work and achievements of UARIV alone cannot replace a coordinated State effort to improve the enjoyment of economic, social and cultural rights in marginalized zones. As UARIV has insisted, with inadequate response from other entities, complementarity between reparation processes and development action is necessary. The Victims and Land Reparation Law has been applied for four years in municipalities such as Tumaco, Nariño; Buenaventura, Valle del Cauca; Turbo, Antioquia; and Riosucio, Chocó. Yet communities and victims continue to suffer profound vulnerability for structural and historical reasons. Weak fiscal and political controls over resource implementation compound this.

67. OHCHR-Colombia observed that, despite State efforts, the collective reparation regime has not achieved its principal objectives of repairing collective damages; providing means to transform inequality, violence, stigmatization, mistrust and pain; ensuring opportunities to reconstruct memory, the social fabric and identity; and ensuring non-recurrence in affected communities. OHCHR-Colombia also observed difficulties in coordinating the collective reparation of territorial rights with other collective Afro-Colombian and indigenous peoples' rights. Of 153 ethnic communities owed collective reparation, only 24 are at the stage of prior consultation.

68. OHCHR-Colombia advised the Government on reconceptualizing State responses through improved national-local coordination and coherence among development plans; basic provision of services related to the rights to, among others, health and education; and victim support and reparation. It is important to build trust, capacity and local community participation to create required social and economic transformations.

3. Land restitution

69. At year's end, the Land Restitution Unit reported having received 87,119 requests for inclusion in the land-theft register, of which 42,325 (49 per cent) were being responded to in "micro-focus" zones where the Ministry of Defence had authorized the initiation of the processes. A total of 30,593 applications (35 per cent) have been finalized; 11,374 (13 per cent) are being processed by the judicial authorities and rulings have been issued in 3,160 cases (4 per cent) relating to 20,000 people. A total of 51 per cent of claims are outside these micro-focus zones and have not advanced, given State difficulties in ensuring adequate security conditions for its personnel and for victims. Partial implementation of restitution claims has led to frustrated expectations on the part of claimants. In November, the Constitutional Court ordered the Government to develop a plan, within six months, to respond to all claims by 2021, the end date for the process.

70. In the Caribbean region, and in Antioquia, Meta, Tolima and Santander, OHCHR-Colombia observed that the principal difficulties faced by claimants included inadequate local institutional budgets, a lack of institutional coordination, and disparities in capacity and political will among the up to 20 different entities responsible for implementing land restitution orders. OHCHR-Colombia recognizes the efforts made by the Land Restitution Unit to respond to collective indigenous and Afro-Colombian claims and awaits prompt judicial decisions. The implementation of the two existing judicial decisions on indigenous territories faced difficulties.

71. OHCHR-Colombia observed that people currently occupying lands to be restituted (secondary occupants) include landless campesinos, victims, rural users and others. The State faces the challenge of distinguishing between good-faith and bad-faith secondary occupants. The historic lack of access to justice in rural areas has created layers of legal uncertainty that today hinder solutions, particularly in Santander, Norte de Santander, Cesar, Sucre, Bolívar, Magdalena, Antioquia, Nariño and Tolima.

72. The law on rural development interest zones, adopted in December, has generated intense public debate. The Government considers it an opportunity to promote rural employment and access to and regularization of land ownership, while others argue that it will increase the concentration of ownership and private use of vacant lands for massive agroindustry, affecting small property and family economies. Providing institutional support for both visions, on the basis of human rights, is necessary for victim reparation, peace agreement implementation and reconciliation in rural areas.

4. Participation

73. Government actions to implement the Victims and Land Reparation Law and other dialogue processes have been significant. However, ensuring that victims can genuinely influence decision-making and implementation remains necessary. This requires processes that transcend formalism with greater resources, patience and flexibility in order to ensure that victims can be true participants in creating solutions.

IV. Structural human rights challenges for an equitable and sustainable peace

74. In addition to issues addressed directly in the peace process, multiple additional human rights challenges urgently require attention in order to achieve peace, some of which have been addressed in previous reports. The construction of a sustainable and equitable peace is possible only through the progressive realization of rights, and the eradication of discrimination and exclusion. While local policies incorporate rights-based language, this approach is lost in institutional implementation, neutralizing impact. Five key areas are outlined below.

A. Economic and social rights

75. Joint State action on economic, social and cultural rights continues to be insufficient. Law No. 1751 of 2015 recognizes the fundamental right to health as autonomous and inalienable. However, OHCHR-Colombia observes that normative advances should result in genuine enjoyment in practice. Overall advances in affiliation with the public health service do not necessarily represent greater access to the right to health, given service scarcity in many rural areas. The National Health Authority sanctioned the Chocó Department for the death of 30 children in 2015 due to the lack of drinking water and medical attention. It is imperative to ensure the non-recurrence of such situations.

76. Violations of right to health observed in other departments, including Amazonas, Caquetá, Putumayo and Arauca, particularly affect indigenous peoples and require a resolute State response. Problems include inadequate access to drinking water, basic sanitation and primary, secondary and tertiary health services; lack of medicines and personnel; scarcity of means for treating victims of sexual violence; and non-recognition of indigenous and Afro-Colombian health perspectives.

77. La Guajira Department receives more oil revenue than most departments, yet it is one of the poorest. According to the National Health Institute, 37 persons died of malnutrition there in 2015 and 492 children were born underweight. The national Government recognized the problem but corruption and a lack of transparency undermined its response. OHCHR-Colombia welcomes the arrest warrants issued for public officials linked to massive corruption that diverted public resources for child services in La Guajira.

78. OHCHR-Colombia highlights advances in the development of education programmes for children with disabilities in Antioquia and Nariño and observes with interest the creation of the Department of Social Prosperity pilot programme entitled "More families in action". However, children with disabilities do not enjoy access to the education system in many parts of the country and, as a consequence, do not receive such assistance.

B. Human rights defenders

79. The work of human rights defenders represents a cornerstone for democracy and the promotion of an equitable and sustainable peace. However, violence against defenders continues and the State has yet to achieve full respect and protection of their rights and work. In 2015, OHCHR-Colombia registered 295 attacks against 885 defenders, including 310 women. The Somos Defensores programme and OHCHR-Colombia registered the murder of 63 defenders. OHCHR-Colombia has verified 41 of those cases and continues to monitor the others. The figures are above the national average of the past 20 years.[4] OHCHR-Colombia also registered 20 attempted killings, including 9 against trade unionists; 151 individual and collective death threats; and 80 complaints of illegal surveillance. In 2015, it recorded the existence of 39 pamphlets threatening 211 women, 298 men and 47 social organizations. The consistency and commonalities of language, message and target victims and organizations reveal a high level of perpetrator organization. This confirms the hostile and insecure environment faced by defenders. The Attorney General obtained one conviction in 2015 for such crimes.

80. OHCHR-Colombia observed that violations against human rights defenders were perpetrated principally against four targets: first, defenders working on issues related to conflicts over land, particularly Afro-descendant and indigenous territories. The murder of four indigenous Emberá-Chamí leaders in Caldas and Risaralda in 2015, and the constant threats against community council members in the Pacific region, occurred in the context of opposition to illegal and legal mining. Threats against the indigenous Nasa people in Cauca increased in response to the people's actions to protect their territories. Of the 36 killings of defenders, 19 were related to such conflicts.

81. A second target are defenders demanding justice. In multiple cases, victims' representatives are targeted, especially those that litigate human rights violations by State

[4] From 1994 to 2014, 683 human rights defenders were killed; an average of 33 defenders were murdered per year over the past 20 years (figures consolidated by OHCHR-Colombia, in the framework of the National Guarantees Round Table, with information provided by the Attorney General's Office and civil society organizations).

actors. Various types of surveillance of and information theft perpetrated against human rights defenders coincide with key moments in criminal proceedings.

82. The third target are social and political leaders. Leaders of the Marcha Patriótica and Congreso de los Pueblos movements received threats and were subjected to surveillance on the basis of their stigmatization as having links with guerrilla forces. In a widely broadcast television programme, a recognized indigenous leader was accused of supporting guerrilla forces. In another case, an army officer publicly accused a campesino organization of links with FARC-EP given its support for a ceasefire.

83. Finally, peace activists were subjected to persecution. Persons and organizations that participated in victims' dialogues in Havana received threats.

84. Since 1997, OHCHR-Colombia has observed that human rights defenders have been repeatedly arrested and deprived of their liberty, in some cases for years, only to be freed for lack of evidence. Arbitrary and illegitimate use of the justice administration to impede or punish human rights action not only violates human rights but also undermines democracy, the rule of law and judicial independence.

85. In 2015, OHCHR-Colombia observed that six investigations of human rights defenders were opened by the Counter-Terrorism Directorate of the Attorney General's Office on the basis of inadmissible military intelligence or informant information. In one case in 2015, four defenders were charged with kidnapping 26 police during the 2013 agrarian social protests. OHCHR-Colombia and the Ombudsperson's Office had directly observed those demonstrations and verified that those leaders had ensured the liberation of the police, who were being held by others. The damage caused by the National Counter-Terrorism Directorate and military intelligence when they seek to prosecute defenders solely on the basis of their legitimate work cannot be underestimated, especially in the context of the peace process. This contrasts with the lack of results in investigations into attacks against defenders.

86. The observations of OHCHR-Colombia reconfirm the need for greater national preventive and protective action for human rights defenders, and the failure of local authorities to develop preventive policies and strategies.

C. Gender and sexual diversity

87. Peacebuilding requires the State and society to overcome gender stereotypes, violence and discrimination against women and lesbian, gay, bisexual, transgender and intersex persons, to ensure their full recognition and participation as rights holders and their quality access to justice.

88. Women represent 50.6 per cent of the population but do not enjoy their rights equally with men. According to the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), women represent 21.2 per cent of legislators, 31.2 per cent of ministers, 15 per cent of governors and 12 per cent of mayors. The subcommission on gender created as a result of the negotiations in Havana has played an important role. However, it is important to ensure greater participation by women in the peace process.

89. According to the National Institute of Legal Medicine and Forensic Science, violence against women is generalized. About 85.57 per cent of victims of intrafamily violence are women, as are 85.08 per cent of alleged victims of sexual violence. State policies and mechanisms to mainstream women's rights require political, technical and budgetary strengthening. OHCHR-Colombia welcomes the broad categorization of crimes against sexual liberty and integrity applied by UARIV when registering victims.

90. According to the National Police, 18 lesbian, gay, bisexual, transgender and intersex persons were killed in 2015. One transgender leader and human rights defender who had suffered discrimination was killed in August in San Marcos, Sucre.

91. Religious beliefs, political positions, social prejudice and the lack of a public policy limit the rights of lesbian, gay, bisexual, transgender and intersex persons, including the rights of same-sex couples to form a family and receive legal protection. The High Commissioner welcomes recent judicial and ministerial decisions that tackle discrimination, but their application has been limited. In February and November, the Constitutional Court, applying the principle of the best interests of the child, ruled to recognize the rights of same-sex partners to adopt children and, in July, ruled to prevent discrimination in school based on a child's sexual orientation. In June, the Ministry of Justice issued a decree permitting the modification of the sex of transgender people in official documents.

D. Sexual violence

92. The magnitude of sexual violence in Colombia is related to the persistence of patriarchal and chauvinistic power structures that reproduce stereotypes and multiple forms of legal, institutional, social and cultural discrimination against women. Sisma Mujer, a non-governmental organization, has drawn attention to the significant increase in sexual violence against women and the lack of results in investigations into sexual violence. The Attorney General's Office estimates that the perpetrators in nearly 90 per cent of rape cases not related to the armed conflict remain unpunished, while almost 100 per cent of cases related to the conflict show no procedural advances. The problem of sexual violence transcends the armed conflict and requires broad national debate and action, from schools to courts, to create the transcendental change society requires. Official information systems on sexual violence remain inadequate to facilitate effective State action.

E. Persons deprived of their liberty

93. The Constitutional Court again declared an "unconstitutional state of affairs"[5] in prisons and ordered urgent measures to address persistently inhuman penitentiary conditions resulting from overcrowding and a lack of medical attention.[6] A total of 36.5 per cent of persons deprived of their liberty have not been sentenced.

94. Given the persistent deterioration of the prison situation, OHCHR-Colombia supports national efforts to conceptualize effective crime prevention measures. Prison construction is not a solution if unaccompanied by major reform of policies on crime. Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment would complement the peace process.

F. Indigenous peoples and Afro-Colombians

95. Despite State efforts, 25 years after the constitutional recognition of the rights of indigenous peoples and Afro-descendant to collective property, effective participation and

[5] Such declarations mean that the Constitutional Court has confirmed the repeated and constant violation of the fundamental rights of a multitude of persons and a solution requires intervention by various State entities to address structural issues.

[6] Judgments T-388/2013, adopted on 28 June 2013 but inexplicably published in March 2015, and T-762 of 15 December 2015, published 3 February 2016.

autonomy, those rights remain unsatisfied owing to a lack of funds and agile, strong national institutions specialized in intercultural approaches. Although indigenous and Afro-Colombian lives, territories and cultures have been disproportionately affected by the conflict, the parties in Havana have yet to engage in dialogue with those populations to ensure the success of the peace process.

96. All persons have the right to participate in decisions affecting them. Afro-Colombians and indigenous peoples enjoy additional protections. OHCHR-Colombia observed that oversight and evaluation of State investment for these populations are impeded because State entities do not disaggregate their budgets and spending or make such information accessible.

97. Six years after the issuance of the Constitutional Court order to create an ethnic protection plan — an administrative measure to prevent violations of collective territorial rights — it remains insufficiently implemented. Only about 20 per cent of claims presented by indigenous and Afro-Colombian victims of forced displacement, armed conflict and megaprojects have been addressed by State institutions, and those have not achieved effective protections. According to the Ministry of the Interior, 25 of 60 titling claims submitted by Afro-Colombian communities have been processed, while 17 are currently being processed.

98. The High Commissioner previously welcomed the advance represented by Decree No. 1953 of 2014 to enable the autonomous functioning of indigenous territories through direct budgetary implementation of the General Participation System. However, regulatory gaps and prerequisites, considered difficult to comply with by some indigenous reserves, limited implementation. OHCHR-Colombia registered cases that confirm the urgent need to fully implement the constitutionally recognized special indigenous jurisdiction and ensure its respect by and coordination with judicial operators in the ordinary jurisdiction.

V. Recommendations

99. **The High Commissioner:**

(a) Calls upon the Government to unify, strengthen and make public its systems on follow-up to recommendations of international and regional human rights systems, and to include the participation of civil society when assessing their implementation;

(b) Urges the parties in Havana to seize the opportunity to dialogue with indigenous peoples and Afro-Colombians to ensure that the peace agreements and their implementation maximize the enjoyment of their collective and individual rights. The final agreement should include specific reference to the commitment to ensure respect for internationally and constitutionally recognized indigenous and Afro-Colombian rights in all aspects of implementation;

(c) Encourages the Government to adopt all measures necessary, in the current economic context, to maximize the potential of the peace agreements to bring about a positive transformation of the human rights situation in Colombia, for example by substantially redistributing the State's human and financial resources;

(d) Urges the Government to intensify planning exercises for the future integrated system for truth, justice, reparation and non-recurrence, which will require respect for international standards and, given its magnitude, greater human and financial resources than any similar past or current transitional justice process worldwide. This should include an informed budgetary exercise and flexible and agile spending mechanisms;

(e) Urges the Government to create an institutional architecture capable of responding to the challenges of the peace process, including overcoming the lack of coherence and coordination, in order to achieve observable and measurable impacts on human rights enjoyment by all persons. This entails changing the relationship between State and citizenry, overcoming the impact of 50 years of armed conflict on institutional culture, fostering collaboration between State officials and the most vulnerable populations, and empowering such populations to demand respect for, protection and fulfilment of their rights;

(f) Recommends that the State protect State and non-State human rights archives immediately and transparently, and harmonize the access to information regime with international standards and the aims of the peace process. The High Commissioner urges countries holding information useful for transitional justice in Colombia to facilitate expedited access to relevant archives;

(g) Urges FARC-EP to expand its commitment to victims and society, reflected in the public recognition act for Bojayá, by taking public actions of respect for human rights and for the organizational systems of the peoples and communities where they will reintegrate, in favour of truth, justice, reparation and non-recurrence;

(h) Recommends that the Government adapt the collective reparation model to achieve its transformative objectives; promote complementarity between collective reparation and development processes; incorporate the relevant content of the Havana agreement on victims; improve the technical and budgetary capacity of relevant institutions at all levels; ensure adequate interinstitutional and national-local coordination; strengthen community organization and participation; and fully implement the differential approach;

(i) Encourages the National Liberation Army and the Government to initiate formal peace negotiations and prioritize respect for the rights of the population, especially victims;

(j) Recommends an ample public discussion on security sector reform and the implementation of citizen security in the post-agreement context. The Government should ensure that military assistance in public security is progressively reduced and applied under the police primacy principle in full compliance with international human rights law;

(k) Urges the State to develop a system to process the totality of sexual violence data to improve prevention, support and criminal policy, to be evaluated annually;

(l) Urges the international community and all United Nations entities in Colombia to consider the conclusions and recommendations of the Secretary-General and the High-level Independent Panel on Peace Operations (A/70/95-S/2015/446) to ensure that all international support for the peace process responds to the human rights realities of the armed conflict, is designed to strengthen national capacities sustainably on the basis of international human rights standards and responds to priorities of both the Government and the population, including women, Afro-Colombians and indigenous peoples;

(m) Encourages the United Nations country team to redouble its efforts to integrate a rights-based approach in its peace and development programming, and to support State implementation of recommendations made by international and regional human rights mechanisms.